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18 JUL 2007

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In re Application of
MAYER, Wilhelm
Serial No.: 10/560,222
PCT No.: PCT/AT04/00122
Int. Filing Date: 07 April 2004
Priority Date: 13 June 2003
Atty. Docket No.: VFM-40030
For: ANTI-CLIMBING DEVICE FOR
RAILWAY CARRIAGES

DECISION

This decision is issued in response to applicant's "Petition to Withdraw, Cancel or Rescind the Notification of Missing Requirements Mailed on January 18, 2007" filed 15 February 2007, which is being treated as a Petition under 37 CFR 1.181.

BACKGROUND

On 07 April 2004, applicant filed international application PCT/AT04/00122 which claimed a priority date of 13 June 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 23 December 2004. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 13 December 2005.

On 12 December 2005, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, among others, the requisite basic national fee; translation of the international application; and a preliminary amendment.

On 18 January 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. Further, the notification indicated that the translation of the international application submitted on 12 December 2005 was defective. Specifically, drawing sheet 1/7 contained text that had not been translated. The notification set a two (2) month period for response.

On 15 February 2007, applicant filed "Petition to Withdraw, Cancel or Rescind the Notification of Missing Requirements Mailed on January 18, 2007" which included a translation of the international application.

DISCUSSION

Applicant states in the present petition, "applicant has investigated the drawings and finds that there was extraneous materials consisting of several words on the first sheet of drawings. Since this extraneous material is not germane or required for this application, applicant is deleting this material from the first sheet of drawings. As stated above, a review of the translation of the international application filed 12 December 2005 included foreign text in the drawings. PCT Rule 49.5(d) states, "[i]f any drawing contains text matter, the translation shall be furnished either in the form of a copy of the original drawing with the translation pasted on the original text matter or in the form of a drawing executed anew." (See also section 1893.01(a)(1) of the Manual of Patent Examining Procedure.) In this case, the translation of the international application filed on 12 December 2005 included untranslated text on drawing sheet 1/7, which is improper. Therefore, the mailing of the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) on 18 January 2007 was proper and applicant's petition to withdraw (cancel or rescind) under 37 CFR 1.181 is dismissed without prejudice.

The (replacement) drawing sheet 1/7 furnished with the present petition is in compliance with PCT Rule 49.5(d). The translation of the international application, which includes replacement drawing sheet 1/7, will be given a receipt date of 15 February 2007.

The \$130.00 processing fee under 37 CFR 1.492(i) for providing an English translation later than 30 months from the earliest claimed priority date is still required.

CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The period for response set forth in the Notification of Missing Requirements, mailed 18 January 2007, remains in effect for furnishing: 1) an oath or declaration in compliance with 37 CFR 1.497; (2) the \$130 surcharge for under 37 CFR 1.497(h) for filing an oath or declaration later 30 months from the earliest claimed priority date; and (3) the \$130.00 processing fee under 37 CFR 1.492(i) for providing an English translation later than 30 months from the earliest claimed priority date. Failure to file a proper response in a timely manner will result in ABANDONMENT of the application.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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